THE CASE FOR EDUCATION AS A FUNDAMENTAL RIGHT OF CITIZENSHIP IN THE UNITED STATES

BY

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THESIS

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Abstract

Since 1896, the issue of "separate but equal" has been an ever present notion in American society. From water fountains to lunch counters, the use of public facilities and the receipt of public services have often been impacted by the ethno-racial group to which one belongs. One of the greatest examples of this circumstance can be found in *Brown v. Board of Education* (1954) wherein it was determined that separate public school facilities for African-American and Caucasian students were inherently unequal. Although the Supreme Court eradicated the "separate" premise of the "separate but equal" doctrine in the *Brown* decision, the ever elusive goal of providing equal educational opportunities to all of America's students remains ephemeral. It is this notion of a right to equal educational opportunities that I examine through the lens of the landmark Supreme Court case *San Antonio School District v. Rodriguez* (1973).

To my grandmother who believed, my mother who nurtured, my father who challenged, my sister who encouraged, my uncle who set the mark, and my mentors who advised, this thesis is dedicated to each of you for the betterment of every citizen in the United States.

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Chapter I

Introduction

Since 1896, the issue of "separate but equal" in regards to public facilities and services has been an ever present notion in American society. From water fountains to lunch counters, the use of public facilities and the receipt of public services have often been impacted by the ethno-racial group to which one belongs (*Plessy v. Ferguson*, 1896). One of the greatest examples of this circumstance is found in the landmark Supreme Court decision, *Brown v. Board of Education* (1954) wherein it was determined that separate public school facilities for African-American and Caucasian students was inherently unequal (*Brown v. Board of Education*, 1954). Although the Supreme Court eradicated the "separate" premise of the "separate but equal" doctrine in the *Brown* (1954) decision, the ever elusive goal of providing equal educational opportunities to all of America's students remains ephemeral. As a result, it is hereby asserted that the inequitable funding of public schools through a state sponsored ad-valorem property tax system disparately impacts the students of comparatively underfunded school districts in terms of the educational opportunities they receive. Based on this premise, it is further asserted that such a funding scheme violates the equal protection rights of students so situated by providing enhanced educational opportunities for some and diminished educational opportunities for others. It is in this regard that State sponsorship of an ad-valorem property tax public school funding system infringes upon a student's right to property and further infringes upon a student's right to liberty by restricting the employment opportunities a student may receive through the provision of comparatively diminished educational opportunities. Through a thorough examination of the historical

record and legal precedent, this paper endeavors to prove that one's liberty and capacity to produce property is tethered to the measure and caliber of educational opportunities one receives and seeks to further establish the link between public school finance and equal educational opportunities.

Chapter II

Review of Literature

The Diminution of Race

In order to fully explicate the nexus of education and property, one must first understand the historical context of the inequities of America's public education system. Upon examining the disbursement of educational opportunities in the United States, one will find that issues of difference have been the primary driver of such inequities and that inequality has persisted in educational opportunities in the United States "for the past four centuries" (Johnson & Howard, 2009, p. 444). This is despite the widespread acknowledgement of the capacity of an education to be "a tool for empowerment and economic mobility for all" (Johnson & Howard, 2009, p. 444). Whether these differences have been tied to family history or ethnicity, these factors, among innumerable others "have had a significant influence on the types of [educational] opportunities afforded to individuals" (Johnson & Howard, 2009, p. 444-5).

In efforts to convince the Supreme Court to equalize educational opportunities between students in the United States, the *Brown* (1954) legal team advanced an "ethnicity based" theory in to the Court's justices in 1954 (*Brown v. Board of Education*, 1954) (Winant, 2000, p. 178). Thurgood Marshall and his contemporaries saw race as a "culturally grounded framework for *collective* identity" and asserted this perspective as it was the most "mainstream" at the time (emphasis added) (Winant, 2000, p. 178). According to Howard Winant (2000), proponents of ethnicity-oriented theories of race assert that "the suppression of prejudiced attitudes could be achieved through contact,

integration, and assimilation" and that discrimination would dissipate through "laws and regulations that made jobs, education, and housing…equally accessible to all" (Winant, 2000, p. 179). Yet, in hindsight the *Brown* (1954) decision did not fully bring about an end to unequal educational opportunities for all students in the United States as hoped (Kozol, 1991). In short, the decision faced severe limitations from the outset. First, *Brown* (1954) lacked "adequate and specific guidelines for implementation", and second, local school boards failed to design "equitable student assignment plans that desegregated schools and enhanced education for all children simultaneously" (Willie & Willie, 2005, p. 482). As a result, more than half a century later, inequity still exists in America's public schools (Kozol, 1991). However, because the racial grievances asserted in *Brown* (1954) were at least somewhat ameliorated by the Court's ruling, the nation came to accept *Brown*'s (1954) ethnicity-based approach as a viable means for successfully achieving meaningful legal remedies (Winant, 2000, p. 178).

Though I appreciate the magnitude and significance of social integration manifested by the *Brown* (1954) decision, a closer examination of the political and social circumstances surrounding the decision suggests that resolving the nation's ethnic inequities may not have been the Court's primary impetus when it delivered its edict. First, the domestic social climate shifted drastically after World War II. According to Derrick Bell, African-Americans went to war on behalf of a country that for centuries oppressed their race, "against a country [the Soviet Union] which in one generation raised [people of color] to the full human dignity of mankind" (Bell, 1980, p. 525). Further, as African-American servicemen returned home from World War II, they not only faced sustained discrimination, but also endured "violent attacks in the South which rivaled

those that took place at the conclusion of World War I" (Bell, 1980, p. 524). As a result, such circumstances prompted Waldo Martin (1998) to state:

> For more and more black freedom fighters as well as American politicians, postwar American apartheid was no longer domestically or geopolitically viable. The growing cold war between the Soviet Union and the United States highlighted the blatant contradiction between the American creed and the reality of America's treatment of its black citizens (Martin, 1998, p. 6.).

It is on this point that Bell (1980) asserts that the *Brown* (1954) decision served to reassure African-Americans that the "precepts of equality and freedom" were available to them (Bell, 1980, p. 524). Continuing, Bell (1980) further contends that the policymakers in the *Brown* decision possessed the ability to see the "economic and political advances at home and abroad" that would manifest with the "abandonment of segregation" through the *Brown* (1954) decision (Bell, 1980, p. 524). In short, as the South underwent the transformation from a rural, plantation society, the opportunity to transform the South into the "sunbelt" created the environment for economic profit (Bell, 1980, p. 525). As a result, "segregation was viewed as a barrier to further industrialization in the South" (Bell, 1980, p. 525). Lastly, due to the pressures of the international stage, America was compelled to grapple with its racial issues at home:

> As the putative leader of the "free world," the United States had to get its domestic house in order. World leadership in an international community made up more and more of non aligned Third World nations—nations created principally by peoples of color—rendered Jim Crow unacceptable (Martin, 1998, p. 6).

In essence, the *Brown* (1954) decision "helped to provide immediate credibility to America's struggle with Communist countries to win the hearts and minds of emerging third world peoples" (Bell, 1980, p. 524). Based on the foregoing, it is reasonable to

believe that the greater social and political circumstances surrounding *Brown's* (1954) decision may have validated *Brown*'s (1954) ethnicity based argument rather than the merits of the ethnicity based argument itself. As a result, it can be easily seen that "the declining legitimacy of racism in the United States stemmed from a mix of forces, both domestic and international, which came together mid-[20th] century (Martin, 1998, p. 60).

The Colorblind Ideology of the Court

Based on the above discussion of the circumstances surrounding the *Brown* (1954) decision, it is hereby asserted that the ethnicity based approach to securing legal remedies in education as offered by *Brown* (1954) may no longer be the firm foundation it was once heralded to be. Simply stated, *times have changed* (Bowman, 2009, p. 48). Instead of wrestling with domestic racial disparity, "the present moment is one of increasing globalization and post coloniality" (Winant, 2000, p. 180). Plainly, the ethnic perspective advanced by *Brown* (1954) was "informed and oriented to the pressing sociopolitical problems of *its time*: notably racial prejudice and discrimination", with a particular emphasis on "state sponsored discrimination" (emphasis added) (Winant, 2000, p. 178). As a result, for the past thirty-four years, "the American conversation on race has been dominated by a debate over the morality, constitutionality, and the political efficacy of affirmative action" (Lawrence, 1995, p. 822). Further, because of affirmative action policies, "racial injustice [has become] less visible…and overt racism [is] generally stigmatized" (Winant, 2000, p. 178). Thus, America has come to believe that dismantling "officially sanctioned racial inequality [is] permissible [but]…to create racial equality through positive state action [is] not" (Winant, 2002). Due to this circumstance, there is

now room for the assertion that because "the demands of the civil rights movement have largely been met…the United States has entered a "post-racial" stage of its history" (Winanat, 2002). For this reason, I assert that *Brown*'s (1954) ethnicity-based approach reached its limit in the legal realm at the close of the twentieth century (Winant, 2000, p. 178). However, as we are now past the first decade of the twenty-first, if we are to advance equal educational opportunities for all of America's students, a viable racial theory must "address the persistence of ethnic classification and stratification in an era officially committed to racial equality and multiculturalism" (Winant, 2000, p.180). In short, a winning argument must be crafted in the neo-conservative, "colorblind" ideology as it is the prevailing law of the land (*Parents Involved in Community Schools v. Seattle School District*, 2006).

In an attempt to establish a colorblind argument to bring about equity in education, the neo-conservative tree from with this colorblind branch springs forth must first be examined. Renowned for its proclamation that the Constitution is colorblind, the dissent of Supreme Court Justice John Marshall Harlan in *Plessy v. Ferguson* (1896) cannot be overlooked. He wrote:

> In view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect to civil rights, all citizens are equal before the law (Martin, 1998, p. 23).

According to Martin (1998), "less well known and less often discussed was Harlan's embrace of de facto white supremacy and his opposition to any kind of social equality between the races" (Martin, 1998, p. 23). Martin asserts that Harlan accepted state sponsored segregation in public schools as it was consistent with the free exercise of a

state's power (Martin, 1998, p. 23). As a result, Harlan's dissent "proved to be very influential in large measure precisely because of its double edge" (Martin, 1998, p.23).

Further, as the "doctrine of natural rights frames the liberal view of citizenship", such in turn "informs the neo-conservative vision of race" (Winant, 1997, p. 80). As race is not one of those listed among the natural rights to life, liberty and property (Locke, 1952), the neo-conservative position finds that race lacks meaning (Winant, 1998, p. 760). According to Howard Winant, "for neo-conservatism, racial difference is something to be overcome, a blight on the core US values—both politically and culturally speaking—of universalism and individualism" (Winant, 1997, p. 80). The neo-conservative argument further advances "universalism in social policy", including critical educational or literary standards, citing its "far greater capacity to represent race in egalitarian and democratic terms" (Winant, 1997, p. 80). Basely stated, "the neo-conservative project has cast doubt on the tractability of issues of racial equality" arguing that State intervention cannot alleviate social inequity, "but in fact only exacerbates it" (Winant, 1997, p. 80).

According to the colorblind legal theory, the premise of equal citizenship is "primarily concerned with protecting individuality" (Lawrence, 1995, p. 822). As a result, in this perspective, all racial classifications are looked upon with suspicion (Lawrence, 1995, p. 823) as according to the neo-conservative position, "every invocation of racial significance manifests 'race thinking'" (Winant, 1997, p.80). In essence, the colorblind perspective equates race consciousness to racism, and thereby parallels a lack of race consciousness to non-racism (Winant, 1998, p. 760). *As a result, the use of ethnic differences as an argument for equalization in American society has*

become untenable (Winant, 1997, p.80). "Thus, when the Supreme Court rules that individualism and meritocracy are the only legitimate criteria for employment decisions or university admissions today, it inevitably and simultaneously represents race as illusory and spurious" (Winant, 1998, p. 756). Such a conclusion by the Court has room to be drawn as "there [is] no timeless and absolute standard for what constitutes racism" as "social structures" and "[racial] discourses" are always being reformed (Winant, 1998, p. 761). By disregarding "unique human individuality" and focusing on the "*irrelevance*" of race to humanness", *the colorblind ideology gives primary rank to our status as citizens* (emphasis added) (Lawrence, 1995, p. 823). Basely, this "nonsubstantative" approach advances the individualist right "unconstrained by reference to continuing societal conditions of inequality" and "is privileged in relation to the eradication of those conditions" (Lawrence, 1995, p. 824-5). If such is truly the case (and this author believes that it is), then the argument that advances the cause of equal educational opportunities for all of America's students must offer its logic with race and ethnicity in absentia. Simply stated, if an argument is to be presented to the Court that can successfully convince it to establish education as a fundamental right of citizenship, this colorblind, neo-conservative ideological perspective must be recognized, accepted, and placated by an argument crafted in it. Through a thorough analysis of the Supreme Court's decision in *San Antonio v. Rodriguez* (1973), I attempt to wield Justice Harlan's "double-edged sword" of colorblind individualism and universalism to establish equal educational opportunities for all of America's citizens.

Chapter III

Background - San Antonio v. Rodriguez (1973)

In the state of Texas, the financing of public elementary and secondary schools results from contributions at both the state and local levels. Nearly-fifty percent of the funds collected are retained from a state funded program created to ensure a minimally basic education for all students enrolled in the state's public school system. At the local level, each district contributes to financing its schools through an ad-valorem tax on property within the district. The appellees, on behalf of Rodriguez, sought relief under the assertion that Texas' system of public school finance favors the more affluent through its emphasis on property taxation and violates the equal protection rights of school children claiming to be members of impoverished families residing in school districts with a comparatively low property tax base. This claim is based on the fact that substantial inter-district disparities in per-pupil expenditures result foremost from differences in the value of assessable property between the Edgewood Independent School District and the Alamo Heights Independent School District (*San Antonio v. Rodriguez,* 1973).

As evidenced in the case, the comparison between Egdewood (least affluent) and Alamo (most affluent) school districts served to highlight the "substantial disparities" caused by the use of the ad valorem property tax system to fund public education (*San Antonio v. Rodriguez*, 1973). In the Edgewood School District, approximately 22,000 students are enrolled in its twenty-five elementary and secondary schools (*San Antonio v. Rodriguez*, 1973). The district finds itself located in an inner-city area having little commercial or industrial property. Further, the district's residents are predominately Mexican-American. As a result, "approximately 90% of the student population" of the

Edgewood school district is Mexican-American and "over 6% is Negro" (*San Antonio v. Rodriguez*, 1973). Continuing, the average assessed property value for students in the district is valued at $5,960.00 per pupil with a median family income of $4,686.00" (*San Antonio v. Rodriguez*, 1973). Both of these figures are the lowest in the metropolitan area (*San Antonio v. Rodriguez*, 1973). Taxed at an "equalized rate of $1.05 per $100.00 of assessed property—the *highest* in the metropolitan area—the [Edgewood] district contributed $26.00 to the education of each child" (emphasis added) (*San Antonio v. Rodriguez*, 1973). In contrast, "Alamo Heights is the most affluent school district in San Antonio" and educates approximately 5,000 students "in a residential community quite unlike the Edgewood District" (*San Antonio v. Rodriguez*, 1973). According to the facts of the case, the school population in the Alamo Heights district is overwhelmingly Anglo with a Mexican-American population of 18% and a "Negro" population of less than 1% (*San Antonio v. Rodriguez*, 1973). However, the assessed property value per student in the Alamo district "exceeds $49,000.00" (more than 8 times that of Edgewood) with a median family income of $8,001.00 (more than 1.5 times that of Edgewood) (*San Antonio v. Rodriguez*, 1973). Accordingly, at a local tax rate of $.85 per $100.00 (in comparison to $1.05 per $100 in Edgewood), $333.00 was rendered for pupil instruction (in comparison to Edgewood's $26.00, which equates to a $307.00 differential) (*San Antonio v. Rodriguez*, 1973). As these gross disparities are "largely attributable to differences in the amounts of money collected through local property taxation", the Texas District Court found that "Texas' dual system of public school finance violated the Equal Protection Clause" of the Constitution of the United States as the system was found to "discriminate on the basis of wealth in the manner in which education is provided for its

people" (*San Antonio v. Rodriguez*, 1973). In short, the District Court determined that wealth is a "suspect" classification and that education is a "fundamental" right, and asserted that Texas' system could be upheld only upon the State's showing that there was a compelling State interest for the system (*San Antonio v. Rodriguez*, 1973). The District Court further found that the State failed to meet this standard as it could not articulate a reasonable or rational basis for its system (*San Antonio v. Rodriguez*, 1973). As a result, certiorari was granted by the Supreme Court upon appeal by the San Antonio School District.

Primarily, there were two fundamental questions before the Supreme Court in the *Rodriguez* (1973) matter. (1) Did the Texas system of financing public education operate to the disadvantage of some suspect class ***or*** impinge upon a fundamental right guaranteed explicitly ***or*** implicitly protected by the Constitution, thereby requiring strict judicial scrutiny, and (2) if the Texas system does operate to the disadvantage of some suspect class, ***or*** impinges either explicitly ***or*** implicitly on a constitutionally guaranteed right, does it further a legitimate, articulated state purpose, thereby permissibly violating the Equal Protection Clause of the Fourteenth Amendment. In order to assess the merits of the San Antonio case based on the above standard, the Supreme Court first investigated the existence of a suspect class.

In order to establish a suspect class from the facts presented, the Court was bound by precedent (*Britt v. North Carolina*, 1971) (*Gardner v. California*, 1969) (*Draper v. Washington*, 1963) (*Eskridge v. Washington Prison Board*, 1958) (*Williams v. Illinois*, 1970) (*Tate v. Short*, 1971) (*Bullock v. Carter*, 1972). Although the lower court found the theory of "wealth discrimination" valid, the Supreme Court rejected this perspective

asserting that the lower court failed to consider the "hard threshold questions" of: (1) whether the class of disadvantaged "poor" can be identified or defined in traditional equal protection terms, and (2) whether the ***relative***, *as opposed to absolute*, degree of deprivation asserted is significant enough to be considered an impermissible violation of the Fourteenth Amendment (*San Antonio v. Rodriguez*, 1973). In short, the Court found that such a "large, diverse, and amorphous class" unified by only one common factor, the relative wealth of the families in a given school district, cannot be defined as a suspect class (*San Antonio v. Rodriguez*, 1973). Further, because education "is not among the rights afforded *explicit* protection" under the Constitution, and because the Court could not "find any basis" for saying [education] is explicitly ***or*** implicitly guaranteed by the Constitution the Court found that no fundamental right was violated, despite the Court's open acknowledgement and straight forward assessment of the gross disparities created by the Texas system (*San Antonio v. Rodriguez*, 1973). Instead, the Court excused the inequalities by stating that Texas' dual system of funding public education "bears a rational relationship to a legitimate state purpose", namely the providing of a basic education for every child in the state and the preservation of significant control of school districts at the local level (*San Antonio v. Rodriguez*, 1973). As a result, the Court held that the *San Antonio* (1973) case did not qualify to be examined under strict judicial scrutiny as it found that the Texas system of public school finance did not impermissibly violate any fundamental right guaranteed explicitly ***or*** implicitly by the Constitution (*San Antonio v. Rodriguez*, 1973). Further, though the Court found that the Texas system violated no rights, the Court asserts that even if a violation had been established, such infringement would be permissible because the *Rodriguez* (1973) case "involves the most

delicate and difficult questions" of local control. In other words, the Court maintains that the State's preservation of local control of schools is of primary concern when addressing issues of inequity in education finance (*San Antonio v. Rodriguez*, 1973).

Simply stated, I wholeheartedly disagree with the Court on its finding that no suspect class or violation of a fundamental right exists. However, I nonetheless assert that the Court's conclusion is correct, if one understands the neo-conservative logic that led to it. In short, even if a suspect class were to be reasonably established by my or any other argument, I assert that such would be discarded almost immediately by the current neo-conservative ideology of the Court. Because the "claim for group rights stands in formal contradiction to the [neo-conservative] principle of individualism", establishing a suspect class, the first step in proving discrimination, becomes a high hurdle to overcome (Bell, 1972, p. 58). Thus, the traditional method of dismantling inequity through arguments of discrimination against a suspect class is considered by this author to be antiquated. As a result, a new, colorblind, property rights-based approach asserted in the neo-conservative framework is believed to be the best way to achieve equality in educational opportunities in the twenty-first century.

Chapter IV

State Violations of Constitutional Rights & Liberties

New Age Reasoning - Education as a Fundamental Right

Upon close examination of the *Rodriguez* (1973) case, the burden of proof to declare education as a right readily establishes itself. As "education is of course not among the rights afforded protection under our Federal Constitution", "the answer lies in assessing whether there is a right to education explicitly ***or*** implicitly guaranteed by the Constitution" (emphasis added) (*San Antonio v. Rodriguez*, 1973). In these statements, the Court entertains the notion that in order to deem education a right, education must be established as a "pre-requisite to the *meaningful exercise* of [an established constitutional] right" (emphasis added) (*San Antonio v. Rodriguez*, 1973). It must be proven that the State, in some way "deprive[s]", "infringe[s]", or "interfere[s]" with "the free exercise of some such fundamental right or liberty" (emphasis added) (*San Antonio v. Rodriguez*, 1973). As a result, I assert that the use of an ad-valorem property tax system to fund public education as in the *Rodriguez* (1973) case first violates a student's guarantee of equal protection of the laws, and second, impermissibly infringes upon a student's substantive and procedural due process rights to liberty and property.

State Violation of the Equal Protection Clause (Fundamental Flaw)

First, it must be understood that Texas' (and any other state) system of financing public education is mandated, operated, governed, and enshrined in the state's constitution and statutes. As a result, when the State decided that it would employ an ad-

valorem property tax system to finance public education, it decided that the funds for educating the students of a particular locale would be derived from the tax revenues generated from the residential, industrial, and commercial property contained within a given school district. Though, "the Equal Protection Clause permits a state to divide different kinds of property into classes and to assign to each a different tax burden *so long as those divisions and burdens are neither* ***arbitrary*** *nor capricious*" (emphasis added) (*Allegheny Pittsburgh Coal Co. v. County*, 1989), in any case, however, it must be recognized that these divisions "are shaped and hardened by zoning ordinances and other governmental land-use controls" determined by the State (*Serrano v. Priest,* 1971). As commercial and industrial property, "which augments a district's tax base", "is distributed unevenly throughout the state", the fact that "governmental action drew the school district boundary lines" cannot be ignored as through its action, the State itself arbitrarily determined "how much local wealth each district would contain" (*Serrano v. Priest,* 1971). By using the ad-valorem property tax system as the funding mechanism for public education, by arbitrarily drawing district boundaries which in turn restricts the generation of educational revenues to the quantity and State assessed value of the residential, industrial, and commercial property contained within a district, the State has purposefully and intentionally decided "to allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence" of certain types of property (*Serrano v. Priest,* 1971). Based on the overwhelming funding disparities generated by the ad-valorem property tax system (as evidenced by the facts of and recognized by the Supreme Court in the *Rodriguez* (1973) case), it is hereby asserted that State sponsorship of such a system of financing public education denies the equal

protection rights guaranteed by the Fourteenth Amendment of the Constitution of the United States to certain students as it differentially treats similarly situated persons in terms of the educational opportunities they receive based solely on the quantity and State assessed value of the property contained within a given school district. In pertinent part, the Amendment states,

> No State shall … deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

State Violation of the Right to Liberty

According to the U.S. Supreme Court in *Daniels v. Williams* (1986), the Fourteenth Amendment "is the source of three different kinds of constitutional protection" (*Daniels v. Williams*, 1986) (Stevens, J, concurring). "First, it incorporates specific protections defined in the Bill of Rights" to the states, chief among them being the fundamental tenets of the Fifth Amendment (*Daniels v. Williams*, 1986) (Stevens, J, concurring). Second, "it contains a substantive component", known as substantive due process, "which bars certain arbitrary government actions "regardless of the fairness of the procedures used to implement them"" (original quotes included) (*Daniels v. Williams*, 1986) (Stevens, J, concurring). Third, the Due Process Clause "is a guarantee of fair procedure, sometimes referred to as "procedural due process"" (original quotes included) (*Daniels v. Williams*, 1986) (Stevens, J, concurring). In other words, the State may not deprive an individual of property "without providing appropriate procedural safeguards" (*Daniels v. Williams*, 1986) (Stevens, J, concurring).

As shown above and recognized by the Supreme Court, the Fourteenth Amendment is written in "broad and majestic terms" (*Board of Regents v. Roth,* 1972). Specifically acknowledging the polymorphous definitions of "liberty" and "property", the Court found that such terms are among the "great [constitutional] concepts…purposely left to gather meaning from experience" (*Board of Regents v. Roth,* 1972). As a result, "though the term has received much consideration", "without doubt [liberty] denotes the right of the individual *to engage in any of the common occupations of life*", and "*to acquire useful knowledge*", and "generally to enjoy those privileges long recognized as essential to the orderly pursuit of happiness by free men" (emphasis added) (*Board of Regents v. Roth,* 1972). Such a belief prompted the Court to state, "In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed" (*Board of Regents v. Roth,* 1972). Further, in defining the parameters of property, the Court maintains that property interests "may take many forms" (*Board of Regents v. Roth,* 1972). Though "property interests, of course, are not created by the Constitution", "rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law -- rules or understandings that secure certain benefits and that support claims' of entitlement to those benefits" (*Board of Regents v. Roth,* 1972). Thus, the Fifth Circuit Court of Appeals was free to reassert the fundamental principle established in *Goss v. Lopez* (1975) in *Debra P. v. Turlington* (1981) that states, "Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which may be protected by the Due Process Clause" (*Debra P. v. Turlington*, 1981). "Based upon this implied property right", I assert that the use of the ad-valorem property

tax system to fund public education as employed in the *Rodriguez* (1973) case violates certain students' Fourteenth Amendment substantive and procedural due process rights to liberty and property by denying them equal educational opportunities (*Debra P. v. Turlington*, 1981). In addition, I further maintain that through its use of the ad-valorem property tax system to fund public education, a state violates Title 20, Chapter 31, §1221–1 of the United States Code which states in pertinent part:

> Recognizing that the Nation's economic, political, and social security require a well-educated citizenry, the Congress
>
> > 1. reaffirms, as a matter of high priority, the Nation's goal of equal educational opportunity, and
> > 2. declares it to be the policy of the United States of America that every citizen is entitled to an education to meet his or her full potential without financial barriers (20 U.S.C. §1221-1).

In addition, I further assert that such students are entitled to injunctive relief under Title 42, §1983 of the United States Code which states in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…(42 U.S.C. § 1983).

As stated by Justice Stevens in his concurrence in *Daniels v. Williams* (1986), "the type of Fourteenth Amendment interest that is implicated has important effects on the nature of the constitutional claim and the availability of § 1983 relief" (*Daniels v. Williams*, 1986) (Stevens, J, concurring). Further, "if the claim is in the first category (a violation of one of the specific constitutional guarantees of the Bill of Rights) [(in this

case, liberty and property)], a plaintiff may invoke § 1983 regardless of the availability of a state remedy" (*Daniels v. Williams*, 1986) (Stevens, J, concurring). "Similarly, if the claim is in the second category (a violation of the substantive component of the Due Process Clause), a plaintiff may also invoke § 1983 regardless of the availability of a state remedy" (*Daniels v. Williams*, 1986) (Stevens, J, concurring). For as it pertains to substantive due process, "no less than with the provisions of the Bill of Rights, if the Federal Constitution prohibits a State from taking certain actions "*regardless of the fairness of the procedures used to implement them*," the constitutional violation is complete as soon as the prohibited action is taken; the independent federal remedy is then authorized by the language and legislative history of § 1983" (emphasis added) (*Daniels v. Williams*, 1986) (Stevens, J, concurring). However, "a claim in the third category -- a procedural due process claim -- is fundamentally different" (*Daniels v. Williams*, 1986) (Stevens, J, concurring). "In such a case, the deprivation [of a fundamental right] may be entirely legitimate…but the State may nevertheless violate the Constitution by failing to provide appropriate procedural safeguards" (*Daniels v. Williams*, 1986) (Stevens, J, concurring). As a result, "in a procedural due process claim, it is not the deprivation of property or liberty that is unconstitutional; it is the deprivation of property or liberty *without due process of law* -- without adequate procedures" that violates the Constitution. Thus, "even though the State may have every right to deprive a person of his property or his liberty, the individual may nevertheless be able to allege a valid §1983 due process claim, perhaps because a predeprivation hearing must be held, ***or because the state procedure itself is fundamentally flawed*****"** (emphasis added) (*Daniels v. Williams*, 1986) (Stevens, J, concurring) (see "Fundamental Flaw" (p. 15)). Based on the foregoing, I

assert that Texas' (and any state's) use of the ad-valorem property tax system to fund public education violates all of the forgoing fundamental tenets. As a result, I will now attempt to show how such a violation occurs.

Defining educational equality as the point when the average educational achievement of all student groups is roughly equal" (Green, 2009, p. 301), educational inequality is defined as "qualitatively distinctive educational experiences and processes that produce inequitable outcomes" (Johnson, 2009, p. 446). As a result, Gloria Ladson-Billings asserts that "property relates to education in explicit and implicit ways" (Ladson-Billings, 1995, p 53). As evidenced in the *Rodriguez* case, it has been indicated that school districts with increased property values are endowed by the State via the ad-valorem property tax system with greater revenue for a given school district by comparison (*San Antonio v. Rodriguez*, 1973). As a result, property relates to education in the first sense as it pertains to intellectual property and equal educational opportunities. As the quality and quantity of a school's curriculum varies directly with the measure of revenues generated from the ad-valorem property tax system of the schools' corresponding district, property bears a significant influence on the curriculum taught in schools. In short,

> The availability of "rich" [(or enriched)] intellectual property [(curriculum)] delimits what is now called "opportunity to learn"—the presumption that along with providing educational "standards" that detail what students should know and be able to do, they must have material resources that support their learning. Thus, intellectual property must be undergirded by "real" property, that is science labs, computers and other state-of-the-art technologies, appropriately certified and prepared teachers (Ladson-Billings, p. 54).

Simply stated, the vast majority of the schools in the United States are underfunded as a result of the nearly universal use of the ad-valorem property tax system, "especially those in low-wealth states and in low-wealth school districts" (Thomas, 2002, p. 781). As successfully demonstrated by Jonathan Kozol in his book *Savage Inequalities* (1991), schools that have comparatively little to no resources comparatively present students with little or no opportunity to learn (as defined above) (Kozol, 1991). As a result, students in comparatively underfunded school districts are compelled by law to attend schools that "lack adequate instructional materials and access to technology" (Thomas, 2002, p. 781). Though the social benefit of compulsory education is undeniable, it must be recognized that compulsion by law "trigger[s] a state's affirmative obligation to provide certain services [equally] to those citizens it chooses to confine" (Right, 2007, p. 30). As stated in the *Youngberg* (1982) case, due process requires that the nature and duration of the State's confinement of an individual must "bear some reasonable relation to the purpose for which the individual is confined" (Right, 2007, p. 32). As a result, chief among the capacities with which the State must endow children in public schools are "sufficient training or preparation for advanced training in either academic or vocational fields as to enable each child ***to choose*** and pursue life work intelligently", and "sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market" (emphasis added) (Elder, 2009, p. 158). This sentiment was underscored by the Kentucky State Supreme Court in *Rose v. Council for Better Education* (1989) wherein the Court stated,

> …each child educated in the system should develop ***to full capacity***: 1) literacy; 2) mathematical ability; 3) knowledge

> of government sufficient to equip the individual to make informed choices as a citizen; 4) self-knowledge sufficient to intelligently choose life work; 5) vocational or advanced academic training; 6) recreational pursuits; 7) creative interests; 8) social ethics (emphasis added) (*Rose v. Council*, 1989).

Under a combined due process/equal protection analysis, the converse of the *Youngberg* (1982) decision states that it would be constitutionally impermissible to restrain an individual for training and then provide the individual with comparatively diminished training. As compulsory education laws require students attend school, students of a school district with a comparatively reduced amount of commercial and industrial property drawn within their boundaries are compelled to attend schools that present them with comparatively diminished educational opportunities. Such can be seen to "infringe on a student's undeniably broad liberty interests by precluding the student from pursuing activities that would otherwise be possible and by forcing a certain type of instruction upon the student" (Right, 2007, p. 30). As a result, when a state fails to provide educational opportunities equally to all of its students, certain students are inevitably harmed while others are inevitably enhanced via compulsory education laws. Therefore, I assert that the State "withhold[s] certain especially important" educational opportunities from the residents of a certain district while affording them to others based solely on the arbitrary boundaries imposed upon them by the State through the use of the ad-valorem property tax system (*Kadrmas v. Dickinson*, 1988). This is how the State violates certain students' rights to liberty, through compelling their attendance by law and subsequently providing them with comparatively diminished training.

State Violation of the Right to Property

Summarily stated, students attending school in a district whose boundaries have been drawn by the State to contain "better" property "attend better staffed and resourced schools with higher qualified teachers, smaller class sizes, and additional enrichment courses" (Johnson, 2009, p. 448). Though the point of "higher qualified teachers" is but one in a host of many criterion that could be examined in terms of equal educational opportunities, such cannot go unexamined in this writing. According to Farkas (2003), "the school resources that show the most promise as determinants of student learning are the human capital of teachers" (Farkas, 2003, p. 1135). Further, Mickleson (2001) describes qualified teachers as "*the single most important school resource linked to opportunities to learn*" (emphasis added) (Mickleson, 2001, p. 580). As a result, even the Coleman Report (1966), which contentiously asserted the "insignificance of resources" to education, states that "differences in teacher quality have a cumulative effect on student achievement over the years and those differences influence the academic achievement of [students]" (Wong, 2004, p. 130). Thus, students who are disadvantaged by educational inequity in public schools "are left behind" from the start (Thomas, 2002, p. 782). In short, the fact that "students need highly qualified teachers and appropriate, up-to-date learning materials" cannot be ignored (Welner, 2005, p. 246).

Further, because credentialed teachers have been extensively educated in pedagogy and subject matter, "they need to be paid salaries that reflect this training" (Welner, 2005, p. 246). As qualified instructors find themselves "employed within a competitive labor market…each is free to seek the job with the most attractive combination of working conditions *and monetary compensation*" (emphasis added)

(Farkas, 2003, p. 1135). Thus, "it is not surprising that the lowest-income, lowest-performing schools have the greatest difficulty recruiting and retaining highly skilled and qualified teachers" (Farkas, 2003, p. 1135). Because comparatively underfunded school districts lack the resources to hire and retain qualified teachers due to the funding constraints imposed upon them by the arbitrary boundaries created, applied, and enforced by the State through its use of the ad-valorem property tax system, the number of students per class is propelled upward in a comparatively underfunded district. However, as found by the Tennessee State Legislature in its Project STAR (Student/Teacher Achievement Ratio) and Lasting Benefits studies, large class sizes hinders a students' capacity to learn (Green, 2006, p. 42). Conducted from 1985-1989, Project STAR was a study that "limited kindergarten, first, second, and third grade class sizes to between thirteen and seventeen students" (Green, 2006, p. 42). "The second phase, the Lasting Benefits Study, was an observation of the consequences of Project STAR once the children returned to regular-sized classrooms", and the third phase, Project Challenge, "was a policy intervention in which the seventeen poorest school districts in the state received additional funding to reduce class sizes in kindergarten to third grade" (Green, 2006, p. 42). In Project STAR, "students in the small-sized classes demonstrated significant gains in academic performance" where the Lasting Benefits Study found that "children enrolled in smaller classes continued to outperform those students educated in regular sized classes, even after they returned to regular sized classrooms" (Green, 2006, p. 43). In addition,

> With respect to Project Challenge, researchers found that student performance in seventeen school districts improved significantly in reading and mathematics. In reading, the academic performance of second graders on standardized

> tests improved from an average ranking of ninety-ninth place out of 139 districts on 1990 to seventy-eighth place in 1993. In math, the academic ranking of the seventeen districts improved from eighty-fifth place to fifty-sixth place in 1993 (Green, 2006, p. 43).

As comparatively underfunded schools often lack adequate school supplies and materials, a school district that is enriched by the State via the ad-valorem property tax system is free to provide enhanced educational opportunities (i.e. qualified teachers and small class sizes) to its students because the State has inherently endowed such a district with the resources to do so through its actions in arbitrarily determining school district boundaries (Johnson, 2009, p. 450). However, at the same time, the State, through its use of the same ad-valorem property tax system, provides diminished educational opportunities to other students by not allowing for the same opportunity to learn based solely on the "fortuitous presence" of commercial and industrial property (*Serrano v. Priest*, 1971). Therefore, I renew my assertion that the State, through its maintenance of the ad-valorem property tax system of funding public education, violates the equal protection rights of certain students as the State denies "especially important" educational opportunities to the students of comparatively underfunded school districts based solely on the amount of commercial and industrial property contained within district's arbitrarily drawn, State enforced boundaries (*Kadrmas v. Dickinson*, 1988). Plainly stated, "regardless of where a child lives and attends school, he or she should have access to [equal educational opportunities]" (Green, 2008, p. 309).

Further, according to *Brown* (1954), education must be considered in light of its current importance to society (*Brown v. Board of Education*, 1954). As a result, it must be understood that "education [in America] is situated within a capitalist economic

system" (Johnson, 2009, p. 447). Further, because of national and international competition, the post-industrial American economy is in now in need of persons possessing technical skill (Halsey, 1997, p. 600). Thus, education has become the primary means of obtaining "technical skill" (Bell, 1972, p. 41) or as economists define it, "human capital" (Bills, 1988, p. 440). The concept of human capital stems from the belief that schooling produces either general (those transferrable across firms) or specific job skills (Bills, 1988, p. 440). This view further holds that schooling "changes people in ways that make them more attractive to employers…as schooling provides the general skills needed to master the more specific skills of the workplace" (Bills, 1988, p. 440). As a result, schooling becomes "the first and decisive opportunity for merit to be gained" (Halsey, 1997, p. 666). Such being the case, this notion of "merit" is more than worthy of examination.

Underpinning the American democracy is the belief that America is a meritocratic society. Framed by the "twin axes of individualism and rationality", the American creed advances the notion that the individual is endowed with the "freedom to fulfill his own purposes" (Bell, 1972, p. 58). According to John Locke, the noted political theorist whose work in the *Two Treatises of Government* is widely known to have influenced the Declaration of Independence and the Constitution, Locke notes that every individual has property *in his or her own person*, and that "*the labor of [the individual's] body and the work of [that person's] hands…are properly theirs*" (emphasis added) (Locke, 1952, p. 17). As a result, "*the unencumbered individual*" is entitled to achieve his aspirations on the basis of his work"—"by his labor to gain property [in its various forms], by exchange to satisfy wants, [and] by upward mobility, to achieve a place commensurate with his

talents" (emphasis added) (Bell, 1972, p. 40). In addition, further serving to underscore the meritocratic ideology is the principle of equality (Bell, 1972, p. 41). As Locke states, all have a right to "*perfect freedom and uncontrolled enjoyment*" of all the rights and freedoms necessary "*to preserve the property the individual creates*" (emphasis added) (Locke, 1952, p. 49). Further, the State is charged with the responsibility of preserving of the rights to property for all members of society "as far as is possible" (Locke, 1952, p. 49). As a direct result of Lockean ideology, the foregoing sentiment can be found loudly echoing in the 5th and 14th Amendments to the Constitution of the United States (Wood, 1969, p. 219) which state:

> 5th Amendment:
>
> > No person shall be … deprived of life, liberty, or property, without due process of law.
>
> 14th Amendment, Section 1:
>
> > No State shall … deprive any person of life, liberty, or property, without due process of law.

At this point in this writing, it must be understood that the Lockean school of thought is the framework within which our rights and privileges as American citizens are based (Wood, 1969, p. 219). Thus, Locke's notion that man is endowed by nature with the capacity to create property is a mainstay of both the American Constitution and this writing. As a result, in the following pages, I attempt to show how the State's denial of equal educational opportunities through use of the ad-valorem property tax system to fund public education infringes upon a student's personal liberty and further denies and diminishes a student's capacity to create property, both of which are violations of their constitutionally protected Fifth, Thirteenth, and Fourteenth Amendment rights.

As "[i]ncreasingly, the newer professional occupations, particularly engineering and economics, [have] become central to the decisions of the society" (Bell, 1972, p. 41), it follows then that not only is America a meritocratic society, but by virtue, a credential based society as well. According to the National Intelligence Council's *Global Trends 2025: A World Transformed*: "[a]s global business grows increasingly borderless and labor markets more seamless, education has become a key determinant of countries' economic performance and potential" (National, 2008, p. 17) . As a result, "adequate primary education is essential, but the quality and accessibility of secondary and higher education will be even more important for determining whether societies successfully graduate up the value-added production ladder" (National, 2008, p. 17). Thus, in today's American society the measure of one's education has become the arbiter of job selection, with reports indicating that employers regard education as "a screening device to select workers with "proper" values" (Cohen, 1986, p. 3).

Because of the current nature of American society, hiring practices "proceed from the premise that the task of [job] selection is to match individuals with the most appropriate or highest level of necessary skills to the jobs or occupations" being offered (Cohen, 1986, p. 1). From a technical perspective, "hiring standards reflect employers' needs to screen workers on the basis of [the] intellectual and technical complexity of the job" (Cohen, 1986, p. 2). Such is the case because employers maintain that "education and other hiring requirements…index worker's values, attitudes, and loyalty" (Cohen, 1986, p. 3). As the future success of the American economy will depend on several factors, chief among them being new production processes and expanded trade, Frank Levy states that the economy will "favor better educated workers over less educated

workers" (Shapiro, 2001, p. 22). In addition, as Levy further contends that America's economic vitality will rest upon the equalizing of the quality of the nation's institutions, *public and private education among others*, he asserts an example:

> [I]n the 1950s the continuing mechanization of agriculture both made farming more efficient and displaced large numbers of farm laborers. Often however, farm laborers could get on a bus to a city where they could find factory jobs at higher pay. In other words, the 1950's economy was not skill-biased: Low skilled workers displaced in one industry could get good jobs in another and so incomes automatically grew throughout the distribution (Shapiro, 2001, p. 22).

He continues,

> Today, [however,] the economy favors the better educated over the less educated. When computerization or international trade displaces a semi-skilled worker, the move to a good job means acquiring the training to become a computer repairman or a laboratory technician, a much harder move than getting on a bus (Shapiro, 2001, p. 22).

As a result of the forgoing, it follows then that the current, post-industrial American society is a meritocracy wherein one's capacity to create, gain, and retain property is "based on technical skills and higher education" (Bell, 1972, p. 30). As John Rawls states, all must be guaranteed the "requisite primary goods to enable them to make intelligent and effective use of their freedoms" (Rawls, 2001, p. 14). Simply stated, public school education must ensure that America's students are trained to be "internationally competitive" and that they are equipped with the "best available knowledge"(Liu, 2006, p. 26). Thus, I maintain that the unequal educational opportunities created by the use of the ad-valorem property tax system endows some students with increased technical skill (intangible personal property) through comparatively enhanced educational opportunities, and that such opportunities in-turn increase their capacity to

produce property through gainful employment in the field of their choosing. However, the same system infringes upon the property rights of other students by providing them with diminished educational opportunities, thereby comparatively diminishing their technical skill, thus depriving them of economically necessary intangible personal property. In addition, I further assert that based on the relationship between education and employment as shown above, the State's depravation of equal educational opportunities via the ad-valorem property tax system in turn illegally restricts a citizen's liberty by constraining his or her choice of life occupation. As stated by the Supreme Court in *Meyer v. Nebraska* (1923), the liberty guaranteed under the Fourteenth Amendment "denotes…the right of the individual…to engage in any of the common occupations of life…" (*Meyer v. Nebraska*, 1923). A deprivation of this right, as exacted by the State through use of the ad-valorem property tax system, is hereby additionally seen as a violation of a citizen's fundamental Thirteenth Amendment protections. The amendment reads:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

As Bruce Ackerman states, "When read as a whole, the Reconstruction Amendments create four tiers of national protection. The first tier is established by the Thirteenth Amendment, abolishing "slavery" and "involuntary servitude" (Balkin, 2001, pp. 102-103). He continues,

> This by itself creates a vast grant of freedom to every American. We should not view "slavery" and "involuntary servitude" as names of ancient practices long since abolished. The Thirteenth Amendment requires an ongoing test of existing status relationships to determine whether

> they mask these forbidden conditions under another name
> (Balkin, 2001, p. 103).

It must be understood that in any circumstance, "a man or woman is in a position of involuntary servitude whenever he or she lacks the freedom to exercise a wide range of legal rights of self determination" (Balkin, 2001, p. 103) (*Pollock v. Williams*, 1944) (*United States v. Gaskin*, 1944) (*Taylor v. Georgia*, 1942). As shown above, education is a perquisite of employment in a given field. Thus, when the State provides the resources for certain students to receive enhanced educational opportunities while denying those same opportunities to others similarly situated, it inevitably broadens the horizons of certain students while diminishing the horizons of others. By denying equal protection of the laws to certain students via the provision of unequal educational opportunities through use of the ad-valorem property tax system, the State deprives certain students of their right to intangible personal property without due process of law and thereby restricts those students' freedom to choose their life's occupation. In is in this regard that the State violates those students' constitutional safeguard against involuntary servitude. Therefore, based on the forgoing and the burden of proof to establish education as a fundamental right of citizenship as set forth by the *Rodriguez* (1973) case, that education must be established as a "pre-requisite to the *meaningful exercise* of [an established constitutional] right, I ***boldly*** assert that there exists a fundamental right to equal educational opportunities protected by the Constitution of the United States and further assert that State sponsorship of the ad-valorem property tax system to fund public education violates a student's right to equal protection of the laws, his or her substantive and procedural due process rights to liberty and property, as well as Title 20, Chapter 31, Section 1221–1 of the United States Code. As a result, I further assert that such students

are entitled to injunctive relief via the provisions of Title 42, Section 1983 of the United States Code.

Chapter V

Conclusion-Principles of Justice

Since its founding, America has claimed itself to be a land where all are equally free to pursue life, liberty, and happiness uninhibited by law. This liberal view sees individuals to be "self-originating sources of valid claims" and that all are "entitled to equal consideration", justice, regardless of their station in life (Tan, 2004, p. 9). Therefore, if American society is to maintain its steadfast belief in the "principle of self-determination" (Tan, 2004, p. 102), then we must honor the fact that "considerations of justice aim to secure equal opportunity and fair background conditions for [*all*] persons and societies in pursuit of their ends" (Tan, 2004, p. 71).

As stated by Supreme Court Justice Thurgood Marshall in his concurrence in *Plyler v. Doe* (1981), the *Rodriguez* (1973) case "implicitly acknowledged that certain interests, though not constitutionally guaranteed, must be accorded a special place in equal protection analysis" (*Plyler v. Doe,* 1981) (Marshall, T., concurring). In arriving at this conclusion, Justice Marshall asserted an example. As "the Court's decisions long have accorded strict scrutiny to classifications bearing on the right to vote in state elections…*Rodriguez* confirmed the "constitutional underpinnings of the right to equal treatment in the voting process"" (original quotes included) (*Plyler v. Doe,* 1981) (Marshall, T., concurring). Though ""the right to vote, *per se*, is not a constitutionally protected right"", regulation of the electoral process still receives "unusual scrutiny" because "the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights" (original quotes included) (*Plyler v. Doe,* 1981) (Marshall, T., concurring). In other words,

> The right to vote is accorded extraordinary treatment because it is, in equal protection terms, an extraordinary right: a citizen cannot hope to achieve any meaningful degree of individual political equality if granted an inferior right of participation in the political process. Those denied the vote are relegated, by state fiat, in a most basic way to second-class status… In a sense, then, denial of an education is the analogue of denial of the right to vote: the former relegates the individual to second-class social status; the latter places him at a permanent political disadvantage (*Plyler v. Doe,* 1981) (Marshall, T., concurring).

In short, "When the State provides [educational opportunities] to some and denies it to others, it immediately and inevitably creates class distinctions of a type fundamentally inconsistent with those purposes…of the Equal Protection Clause (*Plyler v. Doe,* 1981) (Marshall, T., concurring).

If America claims to be a land of self-determination, so too must it claim to be a land of equal opportunity. As the principle of self-determination dictates that the individual is fully responsible for his or her own station in life, when an individual is denied the opportunity to enhance his capabilities through equal educational opportunities he or she is inevitably hindered because of the link between capabilities and income. As a result, Sen is free to state, "[a] child who is denied the opportunity of elementary schooling is not only deprived as a youngster, but also handicapped all through life" as the child is "deprived not only in terms of well-being, but also in terms of the ability to lead responsible lives" (Sen, 1999, p. 284). Such a sentiment was loudly echoed by the Supreme Court when it ruled,

> [D]enial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit. Paradoxically, by depriving the children

> of any disfavored group of an education, we foreclose the means by which that group might raise the level of esteem in which it is held by the majority. But more directly, "education prepares individuals to be self-reliant and self-sufficient participants in society" (original quotes included) (*Plyler v. Doe,* 1981).

Plainly stated, withholding educational opportunities from a student is the equivalent of denying "essential health care to the ill" and such "is a failure of social responsibility" (Sen, 1999, p. 288). Even Adam Smith, noted author of *A Wealth of Nations* (1776) and whose philosophies underpin the modern version of American capitalism, believed in the power of education. He states, "[t]he difference between the most dissimilar characters, between a philosopher and a common street porter, for example, seems to arise not so much from nature, as from habit, custom, and *education*" (emphasis added) (Sen, 1999, p. 295). It cannot be mistaken that "children denied [equal educational opportunities] are placed at a permanent and insurmountable competitive disadvantage, for an uneducated child is denied even the opportunity to achieve" (*Plyler v. Doe,* 1981) (Marshall, T., concurring). More importantly, however, "when those children are members of an identifiable group, that group -- through the State's action -- will have been converted into a discrete underclass" (*Plyler v. Doe,* 1981) (Marshall, T., concurring).

If America seeks to hold true to its premise that each of its citizens retains the right to unimpeded self-determination, then the United States can no longer afford to provide unequal educational opportunities to its students. "If the citizenship guarantee means full membership, equal standing, and effective participation in the national polity", we cannot relegate "schoolchildren to the uneven distribution of opportunity resulting from highly varied state effort and fiscal capacity" (Liu, 2006, p. 23). As a result,

America must seek "not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result" (Wong, 2004, p. 134). Specifically, it must be understood that "equality of opportunity has been based on tensions between the principle of merit, which assumes procedural fairness in the evaluation of individual qualifications for positions, and equality of life chances, which states that background characteristics should not predict future positions" (Wong, 2004, pp. 133-4). As a result, public education cannot be reduced to some mere "governmental "benefit" indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction" (*Plyler v. Doe,* 1981). Further, as the "American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance", "it does not take an advanced degree to predict the effects of a complete denial of [equal educational opportunities] upon those children targeted by the State's classification" (*Plyler v. Doe,* 1981) (Marshall, T., concurring). Thus, the "inestimable toll of that deprivation on the social, economic, intellectual, and psychological well-being of the individual, and the obstacle it poses to individual achievement, make it most difficult to reconcile the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause" (*Plyler v. Doe,* 1981). Therefore, based on the connection between equal educational opportunities and the rights to liberty and property as indicated above, I assert that there exists a fundamental right to equal educational opportunities and that use of the ad-valorem property tax system to fund public education in the United States violates the fundamental rights and freedoms guaranteed to students

by Fifth, Thirteenth, and Fourteenth Amendments to the Constitution of the United States. Without doubt, the words of the Supreme Court in its landmark decision *Brown v. Board of Education* (1954) are as salient today as they were the day the ink dried:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. *Such an opportunity, where the state has undertaken to provide it,* ***is a right*** *which must be made available to all on equal terms* (emphasis added) (*Brown v. Board of Education,* 1954).

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20 *USC* § 1221-1

42 *USC* § 1983

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